

## **Aquila Energy Merchant Services, Inc.**

### **Order No. EA-255**

#### **I. BACKGROUND**

Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On August 13, 1997, in Order EA-148, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Aquila Power Corporation (APC) to export electric energy, for a two-year period, from the United States to Canada as a power marketer. When APC applied to renew that export authority, it noted that a name change had occurred and that the new two-year authorization should be issued in the name of Aquila Energy Marketing Corporation (AEM). That authorization was granted on August 11, 1999, in order EA-148-A, which expired on August 11, 2001. On July 5, 2001, in Docket EA-148-B, AEM again applied to renew its electricity export authority and requested that the order be issued with a 5-year term. The export authority contained in Order EA-148-B, was granted on August 23, 2001, and expires August 23, 2006.

As a result of the corporate restructuring of its trading entities, on September 20, 2001, AEM, a wholly-owned subsidiary of Aquila, Inc.<sup>1</sup> (ILA), and ILA itself, jointly applied to FE for the voluntary transfer from AEM to ILA of the authority to export electric energy from the United States to Canada granted in EA-148-B. This request was given FE Docket No. EA-255. The applicants requested that the transfer of export authority be effective on the date AEM would complete its merger into ILA. The merger was completed on March 1, 2002. On March 13, 2002, prior to FE's completion of the EA-255 proceeding, ILA notified FE that an additional name change had occurred and requested that any authorization granted in this docket be issued in ILA's new name, Aquila Energy Merchant Services, Inc. (AEMS).

AEMS proposes to purchase surplus electric energy from electric utilities and other suppliers within the United States and to export this energy on its own behalf to Canada. The energy to be exported would be delivered to Canada over the international electric transmission facilities owned and operated by the following:

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<sup>1</sup> Aquila Energy Marketing Corporation (AEM) is a Delaware corporation and wholly-owned subsidiary of Aquila Energy Corporation (ILA), which in turn is 80% owned by UtiliCorp United Inc. (UtiliCorp) and 20% owned by the public. The application herein was caused by a liquidation and merger of AEM into ILA with the result that ILA now is engaging in the power marketing activity previously undertaken by the AEM in FE Dockets EA-148, EA-148-A and EA-148-B.

Basin Electric Power Cooperative  
Bonneville Power Administration  
Citizens Utilities Company  
Eastern Maine Electric Cooperative  
International Transmission Company  
Joint Owners of the Highgate Project  
Long Sault, Inc.

Maine Electric Power Company  
Maine Public Service Company  
Minnesota Power, Inc.,  
Minnkota Power Cooperative  
New York Power Authority  
Niagara Mohawk Power Corp.  
Northern States Power Co.  
Vermont Electric Transmission Co.

Notice of the AEMS export application was placed in the *Federal Register* on October 22, 2001, (66 FR 53406) requesting that comments, protests, and petitions to intervene be submitted to the DOE by November 21, 2001. None were received.

## **II. DISCUSSION and ANALYSIS**

The authority requested of DOE by AEMS necessary condition for exporting under section 202(e) of the FPA. AEMS must make the necessary commercial arrangements, including obtaining all necessary transmission access required to wheel the exported energy to the foreign purchaser, and obtain any and all other regulatory approvals which may be required in order to effect the export. In considering the AEMS request for service, the transmitting utilities would have to assess the electric reliability impacts of moving the export through their system and, presumably, would only provide service under terms and conditions that would not cause reliability problems on their system.

An export authorization issued under section 202(e) does not impose on transmitting utilities a requirement to provide service. However, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission (FERC) Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC; Stats. & Regs. ¶131,036 (1996)), as amended. The actual rates, terms and conditions of transmission service shall be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open Access Transmission Tariff on file with the FERC.

All recipients of export authorizations, including owners of border facilities for which Presidential permits have been issued, are required by their export authorization to conduct operations in accordance with the principles of the FPA and pertinent rules, regulations and orders, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. (See Enron Power Marketing, Inc., 77 FERC ¶61,013 (1996)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic interstate transmission of electricity.

Before an electricity export authorization is granted, DOE must find that the proposed export will not impair the sufficiency of electric supply within the U.S. and that it will not impede the coordinated use of regional transmission facilities. DOE has always used a flexible approach in determining the information necessary to evaluate reliability impacts for specific export proposals. In determining reliability impact for exports by power marketers or other entities operating in a similar manner, DOE has used a combination of established industry guidelines, operating procedures and/or infrastructure, as well as technical studies supporting authorizations issued for traditional entities operating at the border. Allowing these existing technical studies to suffice in this docket is sound and, thus, DOE need not perform additional reliability assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the previously authorized limit of the system.

However, this approach is applicable only for exports over international transmission facilities for which export authorizations have been issued and for which reliability studies have been performed. Several of the international transmission lines over which AES NewEnergy seeks export authority are owned and operated by the New York Power Authority (NYPA) and the Bonneville Power Administration (BPA).

As an instrumentality of the State of New York, NYPA is non-jurisdictional to section 202(e) of the FPA. Consequently, DOE never issued NYPA an export authorization or prepared a reliability assessment which could have been used to limit the instantaneous rate of transmission (power) for exports over NYPA's international transmission lines. Thus, in lieu of that, DOE is utilizing the information contained in the report entitled, "Load & Capacity Data, 1995 Report of the Member Electric Systems of the New York Power Pool." This report is prepared and filed with the New York Public Service Commission pursuant to section 6-106 of the Energy Law of New York State. It will be made part of the record in this proceeding and included in the public docket. Section IX of this report lists the transmission transfer capabilities between the New York Power Pool (NYPP)<sup>2</sup> and surrounding electric systems, including Hydro-Quebec and Ontario Hydro. Since all of the major transmission interconnections between NYPP and Ontario Hydro are operated in parallel, it is appropriate to consider a single export power limit for this "electrically logical" grouping of lines. Accordingly, the transfer capability between NYPP and Ontario Hydro (as identified in Section IX of the above report) has been used to limit the instantaneous transmission rate for exports by AEMS over all international transmission lines connecting NYPP with Ontario Hydro (subparagraph B(13)(a) of this Order). A separate limit (subparagraph B(12) of this Order) has been assigned for exports over NYPA's 765-kV tie with Hydro-Quebec because of the asynchronous nature of that interconnection.

As a Federal agency, BPA also is non-jurisdictional to section 202(e) of the FPA. Consequently, BPA was never issued an export authorization which DOE could have used to set power limits for exports by AEMS over BPA's international transmission ties with Canada. However, DOE has obtained information from BPA on the transmission limits assigned to the

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<sup>2</sup> New York Power Pool is an association of NYPA and the seven major investor-owned electric utilities in New York State. NYPP dispatches power throughout New York State on a single-system basis and coordinates the development and operation of its members' production and transmission facilities.

two 500-kV and the two 230-kV lines connecting the BPA system with British Columbia Hydro and West Kootenay Power for operation in the export mode. This information has been made a part of this Docket. It has been used by DOE in setting limits on the power to be exported by AEMS over the BPA international transmission lines (subparagraph B(14) of this Order).

AEMS requested and is being authorized to export electricity over the transmission facilities of some border utilities whose export authorizations still contain limits on the total amount of energy that can be exported by these utilities. These energy limits no longer have any direct relevance to the way DOE addresses electric reliability. DOE expects to initiate a future proceeding regarding the removal of these limits.

However, DOE recognizes the potential inequity of retaining energy limits on certain exporters while currently authorizing marketers, or other entities operating in a similar manner, to export unlimited amounts of energy. Until the above referenced proceeding is completed, exports by power marketers or other entities operating in a similar manner will be constrained by the same energy limits, except exports by such entities will not reduce or be “charged against” those energy limits contained in the original export authorization.

### **III. FINDING**

DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. Based on the above discussion and analysis, DOE has determined that the export of electric energy to Canada by AEMS, as ordered below, would not impair the sufficiency of electric power supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities within the meaning of section 202(e) of the FPA.

DOE also has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment or an environmental impact statement and, therefore, is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Regulations implementing NEPA. Specifically, this categorical exclusion is provided for transmission of electric energy using existing transmission systems. Documentation of the use of this categorical exclusion has been placed in this Docket.

### **IV. ORDER**

Based on the above, Order EA-148-B is hereby superseded and it is ordered that the authority to export electric energy to Canada, previously granted to AEM in EA-148-B, is transferred to AEMS under the following terms and conditions:

(A) The electric energy exported by AEMS pursuant to this Order may be delivered to Canada only over the following existing international transmission facilities for which assessments of the transmission limits for operation in the export mode have been made:

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
Basin Electric	Tioga, ND	230-kV	PP-64
BPA	Blaine, WA	2-500 kV	PP-10
	Nelway, WA	230-kV	PP-36
	Nelway, WA	230-kV	PP-46
Citizens Utilities Company	Derby Line, VT	120-kV	PP-66
Eastern Maine Electric Cooperative	Calais, ME	69-kV	PP-32
International Transmission Company	Detroit, MI	230-kV	PP-230
	Marysville, MI	230-kV	PP-230
	St. Clair, MI	230-kV	PP-230
	St. Clair, MI	345-kV	PP-230
Joint Owners of Highgate Project	Highgate, VT	120-kV	PP-82
Long Sault Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME	69-kV	PP-12
	Fort Fairfield, ME	69-kV	PP-12
	Aroostock County, ME	138-kV	PP-29
	Madawaska, ME	2-69-kV	PP-29
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative, Inc.	Roseau County, MN	230-kV	PP-61
New York Power Authority	Massena, NY	765-kV	PP-56
	Massena, NY	2-230-kV	PP-25
	Niagara Falls, NY	2-345-kV	PP-74
	Devils Hole, NY	230-kV	PP-30

Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND Roseau County, MN	230-kV 500-kV	PP-45 PP-63
Vermont Electric Transmission Co.	Norton, VT	±450-kV DC	PP-76

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A) above. Specifically:

(1) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential permit PP-64 (issued to Basin Electric Power Coop.) To exceed an instantaneous transmission rate of 150 MW. The gross amount of energy which AEMS may export over the PP-64 facilities shall not exceed 900,000 megawatt-hours (MWh) during any consecutive 12-month period.

(2) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-66 (issued to Citizens Utilities Company) to exceed an instantaneous transmission rate of 50 megawatts (MW). The gross amount of energy which AEMS may export over the PP-66 facilities shall not exceed 50,000 MWh annually.

(3) Exports by AEMS made pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permit PP-230 (issued to International Transmission Company) to exceed a coincident, instantaneous transmission rate of 2.2 billion volt-amperes (2,200 MVA).

(4) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-32 (issued to Eastern Maine Electric Coop.) to exceed an instantaneous transmission rate of 15 MW. The gross amount of energy which AEMS may export over the PP-32 facilities shall not exceed 7,500 MWh annually.

(5) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-82 (issued to the Joint Owners of the Highgate Project) to exceed an instantaneous transmission rate of 200 MW nor cause a violation of the following security constrained export limits:

<u>Vermont Total Load (MW)</u>	<u>Security Constrained Maximum Export (MW)</u>
1000	0
900	40
800	90
700	125
600	150
500	170

(6) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-43 (issued to Maine Electric Power Company) to exceed an instantaneous transmission rate of 500 MW.

(7) Exports by AEMS made pursuant to this Order shall not cause the total exports on the combination of facilities authorized by Presidential Permits PP-12 and PP-29 (issued to Maine Public Service Company) to exceed a coincident, instantaneous transmission rate of 40.8 MW. The gross amount of energy which AEMS may export over a combination of the PP-12 and PP-29 facilities shall not exceed 40,000 MWh annually.

(8) Exports by AEMS made pursuant to this Order shall not cause total exports on the facilities authorized by Presidential Permit PP-78-1 (issued to Minnesota Power) to exceed an instantaneous transmission rate of 100 MW. Exports by AEMS may cause total exports on the PP-78-1 facilities to exceed 100 MW only when total exports between the Mid-Continent Area Power Pool (MAPP) and Manitoba Hydro are below maximum transfer limits and/or whenever operating conditions within the MAPP system permit exports on the PP-78-1 facilities above the 100-MW level without violating established MAPP reliability criteria. However, under no circumstances shall exports by AEMS cause total exports on the PP-78-1 facilities to exceed 150 MW.

(9) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-61 (issued to Minnkota Power Cooperative, Inc.) to exceed an instantaneous transmission rate of 350 MW. The gross amount of energy which AEMS may export over the PP-61 facilities shall not exceed 3,000,000 MWh annually.

(10) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-63-4 (issued to Northern States Power) to exceed an instantaneous transmission rate of 500 MW.

(11) Exports by AEMS made pursuant to this Order shall not cause a violation of the following conditions as they apply to exports over the  $\pm$  450-kV direct current transmission line authorized by Presidential Permit PP-76 (issued to the Vermont Electric Transmission Company), as amended by PP-76A:

NEPOOL		
<u>Exports Through</u>	<u>Load Condition</u>	<u>Export Limit</u>
Comerford converter	Summer, Heavy	650 MW
Comerford converter	Winter, Heavy	660 MW
Comerford converter	Summer, Light	690 MW
Comerford converter	Winter, Light	690 MW
Comerford & Sandy Pond converters	All	2,000 MW

(12) Exports by AEMS made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-56 (issued to NYPA) to exceed an instantaneous transmission rate of 1000 MW.

(13) Exports by AEMS made pursuant to this Order shall not cause: (a) the total exports on the facilities authorized by Presidential Permits PP-25, PP-30, PP-74 and PP-190 (issued to NYPA and Niagara Mohawk) to exceed a combined instantaneous transmission rate of 550 MW; and (b) the total exports on the 115-kV facilities authorized by Presidential Permit PP-24 (issued to Long Sault, Inc.) to exceed an instantaneous transmission rate of 100 MW. In addition, the gross amount of energy which AEMS may export over the PP-24 facilities shall not exceed 300,000 MWh annually.

(14) Exports by AEMS pursuant to this Order shall not cause total exports on the two 500-kV lines authorized by Presidential Permit PP-10, the 230-kV line authorized by Presidential Permit PP-36, and the 230 kV line authorized by Presidential Permit PP-46 (issued to BPA) to exceed the following limits:

<u>Condition</u>	PP-36 & PP-46	PP-10	Total Export
	<u>Limit</u>	<u>Limit</u>	<u>Limit</u>
All lines in service	400 MW	1500 MW	1900 MW
1-500 kV line out	400 MW	300 MW	700 MW
2-500 kV lines out	400 MW	0 MW	400 MW
1-230 kV line out	400 MW	1500 MW	1900 MW
2-230 kV lines out	0 MW	1500 MW	1500 MW

(C) Amendment of the export authorizations from which the export limits contained in subparagraphs (B)(1) through (B)(11) were derived shall result in a concomitant change to the export limits contained in those subparagraphs. Notice will be provided to AEMS of any amendments to existing export authorizations that would impact on this order. Any request by AEMS for change to the export limits contained in subparagraphs B(12), B(13), and B(14) will be considered by DOE after submission by AEMS of appropriate information demonstrating a change in the transmission transfer capability between NYPP and Ontario Hydro, NYPP and Hydro-Quebec, BPA and BC Hydro, or BPA and West Kootenay Power.



(D) AEMS may commence exports only over those international transmission lines identified in paragraph (A) for which AEMS provides DOE written evidence that sufficient transmission service has been obtained for delivery of the exported energy to the border. This evidence can consist of signed letters of agreement for the service between AEMS and each Presidential permit holder and should identify specific facilities by name and Presidential permit number.

(E) In scheduling the delivery of electricity exports to Canada, AEMS shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, or independent system operators, as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(F) AEMS shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended.

(G) The authorization herein granted may be modified from time to time or terminated by further order of the DOE, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in paragraph (A).

(H) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(I) AEMS shall make and preserve full and complete records with respect to the electric energy exported to Canada. AEMS shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, detailing for each month of the previous quarter: (1) the gross amount of electricity delivered, in kilowatt hours; (2) the consideration received for such energy; and (3) the maximum hourly rate of transmission, in kilowatts. Quarterly reports must be filed regardless of current activity and whether or not deliveries of electric energy have been made. If no transactions have been made, a one-sentence report indicating “no activity” for the previous quarter is sufficient.

Reports shall be submitted to the U.S. Department of Energy, Office of Fossil Energy, FE-27, 1000 Independence Avenue, SW, Washington, D.C. 20585-0305. Properly identified quarterly reports will also be accepted via facsimile at (202) 287-5736 to meet time requirements, but original copies should still be filed at the above address.

(J) In accordance with 10 C.F.R. §205.305, this authorization is not transferable or assignable, except in the event of the involuntary transfer of this authority by operation of law. Provided

written notice of the involuntary transfer is given DOE within 30 days, this authorization shall continue in effect temporarily. This continuance also is contingent on the filing of an application for permanent authorization within 60 days of the involuntary transfer; the authorization shall then remain effective until a decision is made on the new application. In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application for a new export authorization, together with a statement of reasons for the transfer.

(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

(L) This authorization shall be effective from the date of this Order until August 23, 2006, the date EA-148-B would have expired. Application for renewal of this authorization may be filed within six months prior to expiration of this authorization.

Issued in Washington, D.C., on April 25, 2002.

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